

## Environmental Protection Agency

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(c) Fee shall not be paid to the prime contractor under this cost-sharing contract.

(d) The Contractor shall maintain records of all costs incurred and claimed for reimbursement as well as any other costs claimed as part of its cost share. Those records shall be subject to audit by the Government.

(e) Costs contributed by the Contractor shall not be charged to the Government under any other contract, grant or agreement (including allocation to other contracts as part of an independent research and development program) nor be included as contributions under any other Federal contract.

(End of clause)

[61 FR 14505, Apr. 2, 1996]

### 1552.216-77 Award term incentive.

As prescribed in 1515.406(c), insert a clause substantially the same as follows:

#### AWARD TERM INCENTIVE (FEB 2008)

(a) *General.* This contract may be extended as set forth in paragraph (b) based on overall contractor performance as evaluated in accordance with the Clause entitled "Award Term Incentive Plan," provided the Agency has a need for the effort at or before the time an award term is to commence, and if the contractor receives notice of the availability of funding for an award term period pursuant to the "Award Term Availability of Funds" clause. The Contracting Officer is responsible for the overall award term evaluation and award term decision. The Contracting Officer will unilaterally decide whether or not the contractor is eligible for an award term extension, and in conjunction with the Contracting Officer's Representative, will determine the need for continued performance and funding availability.

(b) *Period of performance.* Provided the contractor has achieved the performance measures, e.g., acceptable quality levels, set forth in the clause "Award Term Incentive Plan," the Contracting Officer may extend the contract by exercising \_\_\_\_\_ [insert the total award term incentive periods] additional award term incentive period(s) of \_\_\_\_\_ [insert the award term incentive period] months each. The total maximum period of performance under this contract, if the Government exercises any option periods and all award term incentive periods is \_\_\_\_\_ [insert the total of the base period, option periods (if any), and award term incentive periods] years.

(c) *Right not to grant or cancel the award term incentive.* (1) The Government has the unilateral right not to grant or to cancel award term incentive periods and the associated award term incentive plans if—

(i) The Contracting Officer has failed to initiate an award term incentive period, regardless of whether the contractor's performance permitted the Contracting Officer to consider initiating the award term incentive period; or

(ii) The contractor has failed to achieve the performance measures for the corresponding evaluation period; or

(iii) The Government notifies the contractor in writing it does not have funds available for the award term incentive periods; or

(iv) The Government no longer has a need for the award term incentive period at or before the time an award term incentive period is to commence.

(2) When an award term incentive period is not granted or cancelled, any—

(i) Prior award term incentive periods for which the contractor remains otherwise eligible are unaffected.

(ii) Subsequent award term incentive periods are thereby also cancelled.

(d) Cancellation of an award term incentive period that has not yet commenced for any of the reasons set forth in paragraph (c) of this clause shall not be considered either a termination for convenience or termination for default, and shall not entitle the contractor to any termination settlement or any other compensation. If the award term incentive is cancelled, a unilateral modification will cite this clause as the authority.

(e) *Award term incentive administration.* The award term incentive evaluation(s) will be completed in accordance with the schedule in the Award Term Incentive Plan. The contractor will be notified of the results and their eligibility to be considered for the respective award term incentive no later than 120 days after an evaluation period.

(f) *Review process.* The contractor may request a review of an award term incentive evaluation which has resulted in the contractor being ineligible for the award term incentive. The request shall be submitted in writing to the Contracting Officer within 15 days after notification of the results of the evaluation.

(End of clause)

[73 FR 1981, Jan. 11, 2008]

### 1552.216-78 Award term incentive plan.

As prescribed in 1515.406(c), insert a clause substantially the same as follows:

#### AWARD TERM INCENTIVE PLAN (FEB 2008)

(a) The Award Term Incentive Plan provides for the evaluation of performance, and, together with Agency need and availability of funding, serves as the basis for award term

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decisions. The Award Term Incentive Plan may be unilaterally revised by the Government. Any changes to the Award Term Incentive Plan will be made in writing and incorporated into the contract through a unilateral modification citing this clause. The Government will consult with the contractor prior to the issuance of a revised Award Term Incentive Plan, but is not required to obtain the contractor's consent to the revisions.

(b) [describe the evaluation periods and associated award term incentive periods, e.g., months 1-18 for award term incentive period I, and months 19-36 for award term incentive period II]

(c) [describe the evaluation schedule, e.g., 90 days after the end of the evaluation period]

(d) In order to be eligible for an award term incentive period the contractor must achieve all of the acceptable quality levels (AQL) for the evaluated tasks, both individual and aggregate, for that evaluation period. Failure to achieve any AQL renders the contractor ineligible for the associated award term incentive period. [identify the most significant tasks. Describe the AQL for each task as well as an overall AQL for the associated evaluation periods, e.g., an AQL of 90% each for tasks 1 and 3, and an AQL of 85% for task 7, and an overall AQL of 90% for the months 1-18 evaluation period]

(e) [If the contract will contain a quality assurance surveillance plan (QASP), reference the QASP, e.g., attachment 2. Typically, the performance standards and AQLs will be defined in the QASP]

(End of clause)

*Alternate 1* (FEB 2008) As prescribed in 1516.406(d), substitute paragraphs substantially the same as following paragraphs (b) through (e) for paragraphs (b) through (e) in the basic clause:

(b) At the conclusion of each contract year, an average contract rating shall be determined by using the numerical ratings entered into the Department of Defense Contractor Performance Assessment Reporting System (CPARS) for this contract. The CPARS is an interactive database located on the Internet which EPA uses to record contractor performance evaluations.

(c) The contract year average rating shall be obtained by dividing the combined ratings by the number of ratings, for example:

| Criteria                            | Rating                |
|-------------------------------------|-----------------------|
| Quality of Product or Service ..... | 5.                    |
| Cost Control .....                  | 4.                    |
| Timeliness of Performance ....      | 4.                    |
| Business Relations .....            | 5.                    |
|                                     | 18 (combined rating). |

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| Criteria | Rating  |
|----------|---|
|          | / 4 (number of ratings).<br>= 4.5 contract year average rating. |

(d) The contractor shall be evaluated for performance from the start of the contract through Year \_\_\_\_ [identify the evaluation period, e.g., year three]. The average rating for each contract year (as derived in paragraph (c) above) will be combined and divided by [insert the number of evaluation periods] to obtain an overall average rating, for example:

| Evaluation period | Average rating                      |
|-------------------|-------------------------------------|
| Year One .....    | 4.5.                                |
| Year Two .....    | 4.75.                               |
| Year Three .....  | 4.75.                               |
|                   | 14 (combined average rating).       |
|                   | / 3 (number of evaluation periods). |
|                   | = 4.66 overall average rating.      |

(e) Based on the overall average rating as determined under paragraph (d), provided that no individual rating, i.e., Quality of Product or Service, Cost Control, Timeliness of Performance, or Business Relations is below a 3, the contractor shall be eligible for the following award term periods:

(1) Overall average rating of 4.6 to 5.0—Two award term incentive periods of \_\_\_\_ [insert the number of months] months.

(2) Overall average rating of 4.0 to 4.6—One award term incentive period of \_\_\_\_ [insert the number of months] months.

[73 FR 1981, Jan. 11, 2008, as amended at 78 FR 46291, July 31, 2013]

**1552.216-79 Award term availability of funds.**

As prescribed in 1515.406(c), insert the following clause:

**AWARD TERM AVAILABILITY OF FUNDS (FEB 2008)**

Funds are not presently available for any award term. The Government's obligation under any award term is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the Government for any award term payment may arise until funds are made available to the Contracting Officer for an award term and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

[73 FR 1981, Jan. 11, 2008]